IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2503 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DHANLAXMI CO.OP. HSG. SOC.LTD. - Petitioner(s)

Versus

AUDA & 8 - Respondent(s)

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Appearance :

MR AK CLERK for Petitioner(s) : 1,
MR RR MARSHALL for Respondent(s) : 1,
MR CG SHARMA for Respondent(s) : 2 - 3,3.2.2 - 5, 5.2.2,5.2.3 - 8.
None for Respondent(s) : 3, 5,
- for Respondent(s) : 0.0.0

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 31/08/2005

ORAL JUDGMENT

1.In this petition under Article 226 of the Constitution of India, the petitioner-allottee of final plot No.57

under the Town Planning Scheme No.1 (Vejalpur) which has become final, has prayed for an appropriate writ, direction or order directing the respondent No.1-appropriate authority to hand over peaceful and vacant possession of land admeasuring 876.33 sq. mts. allotted to the petitioner under the Final Town Planning Scheme No.1 (Vejalpur) in Final Plot No.57 and till then restraining the respondent Nos.1 to 8 from dispossessing the petitioner from land admeasuring 495 sq. mts. bearing final plot No.203 of Town Planning Scheme No.1. Alternatively, it is also prayed for directing the respondent No.1 appropriate authority under the Town Planning Act to propose the variation in Town Planning Scheme No.1 (Vejalpur) so as to leave the land admeasuring 495 sq. mts. bearing final plot No.203 with the petitioner and further directing the respondent No.1 to pay compensation to the petitioner in respect of 381.33 sq. mts. of land and directing the respondent No.9 to consider the variation in the Town Planning Scheme No.1 proposed by the respondent No.1.

2. The petitioner-society was the owner of land admeasuring 1-Acre 34-Gunthas bearing Survey No.542 paiki in village Vejalpur, Tal. City, Dist. Sub-

District Ahmedabad. On sanctioning of the Draft Town Planning Scheme No.1 (Vejalpur), the petitioner-society is allotted final plot No.57 admeasuring 4946 sq. mts. against its land admeasuring 7487 sq. mts. which is forming part of original plot No.53 belonging to other owners. It also appears from the record that some portion of the land i.e. land admeasuring 495 sq. mts. from the land belonging to the petitioner-society being original land bearing Survey No.542 paiki is given final plot No.203 and under the said Scheme, it is allotted to the respondent Nos.2 to 8. It appears that there is an encroachment in the land admeasuring 876.33 sq. mts. from the land bearing original plot No.53, which is now forming part of final plot No.57 which is allotted to the petitioner-society and therefore, it appears that the respondent No.1 has not handed over the entire final plot No.57 to the petitioner-society and has not handed over the possession of the final plot No.57 to the petitioner-society land admeasuring 876.33 sq. mts. which is forming part of original plot No.53. Thus, it is the case of the petitioner-society that the respondent No.1 has not fully implemented the Town Planning Scheme No.1 (Vejalpur) by handing over the peaceful and vacant possession of the entire final

plot No.57. It is the contention on behalf of the petitioner-society that on one hand, the respondent No.1 has not handed over the possession of the entire final plot No.57, (more particularly, the land admeasuring 876.33 sq.mts. forming part of original plot No.53) and on the other hand, the respondent No.1 along with respondent Nos.2 to 8 are trying to get the possession of the land admeasuring 495 sq. mts., which is now given final plot No.203, which was from the original land of petitioner-society. It is submitted that there are suits and counter-suits filed by the petitioner-society and respondent Nos.2 to 8 and the same are pending before the competent Civil Court. As the respondent No.1 has not implemented the Town Planning Scheme fully which has become final by not handing over the peaceful and vacant possession of the entire final plot No.57 to the petitioner-society, the petitioner-society has preferred the present Special Civil Application with the reliefs stated hereinabove.

3. Shri A.K.Clerk, learned advocate, appearing on behalf of the petitioner-society has vehemently submitted that once the Town Planning Scheme has become final, it is the bounden duty of the respondent No.1-appropriate

authority to implement the said Scheme by handing over the peaceful and vacant possession of the final plot to the allottee even if, the same is in illegal occupation and possession of the other persons and/or the same is encroached and/or occupied by the other persons. Shri Clerk, learned advocate appearing on behalf of the petitioner has relied upon the judgment of the Hon'ble Supreme Court in case of ***The Municipal Corporation for Greater Bombay & Another V/s. Advance Builders (India) Private Limited & Others*** reported in ***AIR 1972 S.C. p.793*** as well as the judgment and order of this Court in case of ***Amarsinh Shanaji Thakor V/s. State of Gujarat*** reported in ***(2004) 7 G.H.J. p.127*** in support of his above submissions. It is also further submitted that on one hand the respondent No.1 is not handing over the peaceful and vacant possession of the entire final Plot No.57 and not performing its statutory duty and on the other hand, the respondent No.1 along with respondent Nos.2 to 8 are trying to get the possession of the land which is required to be taken away from the petitioner-society, which is now forming part of final plot No.203 which is allotted to the respondent Nos. 2 to 8. Shri Clerk has submitted that the petitioner-society could not have any objection in handing over

the possession which is required to be handed over to the respondent No.1 and/or respondent Nos.2 to 8, but, unless and until the petitioner-society is handed over the peaceful and vacant possession of the final plot which is allotted to the petitioner-society under the finalized Town Planning Scheme, the respondent No.1 cannot insist to take the possession of the land in question. Shri Clerk has further submitted that if it is not possible for the respondent No.1 to hand over peaceful and vacant possession of the entire Final Plot No.57, in that case, the respondent No.1 is required to get the scheme varid and/or to pay the compensation to the petitioner. However, the petitioner-society cannot be the loser at both the hands and therefore, it is requested to allow the present Special Civil Application.

4. Shri R.R.Marshall, learned advocate appearing on behalf of the respondent No.1-Town Planning Authority has submitted that in view of the fact that in the portion of Final Plot No.57, more particularly, land admeasuring 876.33 sq. mts. of land, which is forming part of Original Plot No.53 there is already a construction and the construction put up by some other

persons and therefore, it is not possible for the respondent No.1 to hand over the peaceful and vacant possession of the entire Final Plot No.57, more particularly, the aforesaid land admeasuring 876.33 sq. mts. which was from the Original Plot No.53. On instructions Shri Marshall, learned advocate has submitted that now, it has been decided by the respondent No.1 to propose for variation.

5.Shri C.G.Sharma, learned advocate appearing on behalf of respondent Nos.2 to 8 has submitted that they are alloted final plot No.203 inclusive of the land admeasuring 495 sq. mts. which was originally owned by the petitioner-society i.e. land bearing Survey No.542 and they are not concerned with the dispute that the respondent No.1 ought to have handed over the peaceful and vacant possession of entire final plot No.57 to the petitioner-society and therefore, it is requested to dismiss the present Special Civil Application.

6.Heard the learned advocates appearing on behalf of the respective parties.

7.It is not in dispute that the Town Planning Scheme No.1

(Vejalpur) has become final since long and the petitioner-society is allotted final plot No.57 admeasuring 4946 sq. mts. of land. Once the Town Planning Scheme has become final, it is the duty of the appropriate authority to implement the Town Planning Scheme fully and to hand over the peaceful and vacant possession of the land to the allottee as per final plot. It appears from the record that the petitioner is handed over the peaceful and vacant possession of final plot No.57 except the land admeasuring 876.33 sq. mts. and the said 876.33 sq. mts. of land is forming part of original plot No.53 belonging to other owners. On implementation of the Town Planing Scheme and on finalizing of the same, the original owner has no right, title or interest in the land admeasuring 876.33 sq. mts. belong to original plot No.53. Therefore, it is the bounden statutory duty on the part of the respondent No.1 to see that the said 876.33 sq. mts. of land from original plot No.53, which is now forming part of final plot No.57, is to be handed over to the petitioner-society. The respondent Nos.2 to 8 are alloted final plot No.203 and the said land is inclusive of the land admeasuring 495 sq. mts., which is from the land originally owned by the petitioner

-society and as such the respondent Nos.2 to 8 are also entitled to the peaceful and vacant possession of the entire final plot No.203 by taking over possession of the 495 sq. mts. of land from the petitioner-society also. It is not in dispute that the petitioner-society is not handed over the peaceful and vacant possession of the entire final plot No.57 and is handed over the peaceful and vacant possession of only 4070 sq. mts. of land of final plot No.57. Thus, the petitioner- society is not handed over the possession of the land admeasuring 876.33 sq. mts. of land of final plot No.57. Thus, the respondent No.1-authority has not fully implemented the Town Planning Scheme by handing over the peaceful and vacant possession of the entire final plot No.57. Thus, it can be said that the respondent No.1 has failed in its statutory duty to implement the Town Planning Scheme fully by removing the persons/occupants from the land admeasuring 876.33 sq. mts. of original plot No.53 which is now forming part of final plot No.57. On the other hand, when the respondent No.1-authority has not handed over the peaceful and vacant possession of the entire final plot No.57, the respondent No.1-authority along with respondent Nos.2 to 8 are insisting the petitioner to

hand over the possession which is in occupation and possession of the petitioner society i.e. 495 sq. mts. which is now forming part of final plot No.203. Shri Clerk, learned advocate appearing on behalf of the petitioner-society has already stated that as such the petitioner-society has no objection and could not have any objection in handing over the possession of the land admeasuring 495 sq. mts., which is now forming part of final plot No.203 which is in possession of the petitioner-society but has submitted that simultaneously, the petitioner-society should also be handed over the peaceful and vacant possession of entire final plot No.57. Shri Clerk is justified in his submition and making grievance that without fulfilling their statutory obligation, the respondent No.1 cannot insist for the possession of land which is required to be handed over by the petitioner-society. He has submitted that the aforesaid things can be done simultaneously i.e. on handing over the peaceful and vacant possession of entire final plot No.57 to the petitioner-society, respondent No.1 can take over the possession of land admeasuring 495 sq. mts. from the petitioner-society which is now forming part of final plot No.203.

8.As held by the Hon'ble Supreme Court in case of Municipal Corporation for Greater Bombay & Another (Supra), it is the bounden and corresponding duty on the part of the authority under the Town Planning Act to perform the duty and hand over the peaceful and vacant possession of the land as per the final Town Planning Scheme. It is also held by the Hon'ble Supreme Court in the said judgment that even the Corporation is required to remove the unauthorized construction which is there on the land in question. Even this Court, in case of ***Amarsinh Shanalal (Supra)*** relying upon the judgment of the Hon'ble Supreme Court in case of ***Municipal Corporation for Greater Bombay & Another (Supra)*** in the similar set of circumstances, has directed to implement the Town Planning Scheme and to hand over the peaceful and vacant possession as per the finalize Town Planning Scheme and the petitioner of that case is directed simultaneously to hand over the peaceful and vacant possession of the land to the Municipal Corporation, which is required to be handed over to the Municipal Corporation. In the present case, now, Shri Marshal, learned advocate appearing on behalf of respondent No.1 has submitted that the Corporation has now decided to vary the scheme. He, however, has

not submitted as to how and in what manner the scheme is to be varied. It is required to be noted that the scheme has become final since long and till date even there is no resolution passed by the A.U.D.A. and/or even there is no proposal for variation of the scheme. Under the circumstances and considering the aforesaid two judgments i.e. one of the Hob'ble Supreme and the another of this Court, and in view of the fact that the Town Planning Scheme has become final, the respondent No.1 is required to be directed to implement the Town Planning Scheme fully within stipulated time unless the scheme is varied in between.

9. For the reasons stated above, the petition succeeds. The respondent No.1- Town Planning Authority is directed to fully implement the Town Planning Scheme No.1 (Vejalpur) by handing over the peaceful and vacant possession of entire final plot No.57 to the petitioner -society, more particularly, land admeasuring 876.33 sq. mts. of land from the land bearing original plot No.53 which is now forming part of final plot No.57 within a period of 6 months from the date of receipt of this order unless the scheme is varied and there are changed circumstances. On getting the land admeasuring

876.33 sq. mts. from the original plot No.53 which is forming part of final plot No.57, the petitioner-society is directed to hand over the peaceful and vacant possession of the land admeasuring 495 sq. mts. which is in their possession and the same is now forming part of final plot No.203 which is alloted to the respondent Nos.2 to 8 simultaneously, and respondent No.1 to see to it that the Town Planning Scheme is fully implemented and they shall perform their duty under the Town Planning Scheme and till then, the parties are directed to maintain ***status-quo***.

10.Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.